would be no defence. Then the drawee would have been entitled to be subrogated to his rights as *cestui que trust* against the converter. Here, however, the drawer had no right of action against the drawee. Can, then, the doctrine of subrogation be applied? It may be objected that it cannot; that in order to be subrogated to the right of the drawer against the converter, the drawee must first have paid the equivalent of that claim to the drawer. Yet it is clear that this drawer cannot retain his claim as *cestui que trust*. He cannot both be enriched by the amount paid by the drawee and at the same time refuse to give the latter allowance for the amount on account. Therefore the term "subrogation" seems to have an appropriate application here in a broader sense, namely, that when one person has an equitable right to which another is entitled, that other should have the right on grounds of natural justice. The result is reached, as in the principal case, by courts of law allowing a direct action to recover back the money paid; yet, on principle, the right of the drawee is an equitable one to be placed in the position of *cestui que trust*, so that he may then sue the wrongdoer.

SEALED VERDICTS. — Even in the early development of the trial by jury, the idea existed that the jury should be left absolutely to themselves in their final consideration and decision. To insure this privacy the old oath administered to the bailiff read, "you shall keep this jury without meat, drink, fire, or candle, you shall suffer none to speak to them, neither shall you speak to them yourself."

In that older and most summary justice the work of the juries was less arduous, yet for their ease was introduced the device of the privy verdict. When a court adjourned while the jury was still out the jury might, on reaching an agreement, reduce their verdict to writing, seal it, leave it with an appointed officer, eat and separate, to reassemble at the opening of the court to give a final oral verdict. This expedient, though mentioned as early as Rolle's Abridgement, p. 712, was rare, and never used in trials of felony. In the modern practice, particularly in this country, it has been far more common. In almost all the States, in all cases, civil or criminal, except capital, either by statute, by agreement of the parties, or sometimes by order of the court without agreement, the jury may separate after a privy, or sealed, verdict as it is called here and meet again to affirm it at the next court-day.

The important question is as to the legal effect of that sealed verdict. In the old law it was clearly a mere nullity. When the jury came together again, the beaten party, or the accused, had a right to ask the decision of each juror separately, poll them, as it is called, just as in the ordinary case, and their answers, if unanimous, were the final verdict. They might well dissent from or change their privy verdict, — it was simply a device for their comfort. *Saunders* v. *Freeman*, 1 Plowd. 209. But it is not clear whether the effect of the modern sealed verdict is the same. The question was squarely raised in the recent case of *The People* v. *McLaughry*, Chicago Law Journal, Dec. 2, 1898. There no verdict was given in open court and a sentence was passed on the sealed verdict. It was argued that the prisoner by consenting to a sealed verdict waived his right to the oral one, that at least the error merely gave ground for a new trial; but the Court, following the old law strictly, held that the sealed verdict amounted to nothing, that the sentence under it was abso-

lutely unlawful, and as the prisoner had been once in jeopardy he might have the benefit of the *habeas corpus*. It cannot be doubted that justice was cheated again. Such judicial escapes as this have led to a general relaxation of the criminal procedure, and it may be urged that it is the merest form to require the jury to reaffirm its written verdict. On the other hand it may be a valuable privilege for the accused to ask the final decision of each of his triers separately when the coercion of the majority of the fellow-jurors ceases to have effect; he would have had this privilege if there had been no sealed verdict, — why should he lose it? The oral verdict is at most only a slight formality, not harassing, and seldom objected to. The conservative decision in the principal case represents the bulk of the American authority, though states like Massachusetts and Virginia, which have done away with polling, might well refuse to follow it.

PROPERTY IN ANIMALS FERÆ NATURÆ. — When an animal *ferœ naturœ* is reduced into possession, the possessor gains a qualified proprietary right. The limitations of that right were involved in a recent decision of the New York Supreme Court. *Mullett* v. *Bradley*, 53 N. Y. Supp. 781 (Sup. Ct. App. Term.). A sea-lion, brought from the Pacific coast to Long Island, escaped from the possession of its owner, and was abandoned by him. A year afterward it was recaptured upon the New Jersey coast by a fisherman, seventy miles from the place of escape. Upon these facts it seems clear that the former owner had forfeited his right by the abandonment. *Buster* v. *Newkirk*, 20 Johns. 73. However, this was not the *ratio decidendi*. The court held for the fisherman upon the ground that the owner had lost his property by the very loss of possession.

The ruling of the court represents the usual statement of the law of property in wild animals that remain undomesticated. *Goff* v. *Kilts*, 15 Wend. 550; *Ulery* v. *Jones*, 81 Ill. 403. The old writers assume that as ownership in animals *ferœ naturœ* is acquired by taking possession, the property is always contingent upon the maintenance of an actual possession. The further ancient rules that such animals remain property when beyond manual control *animo revertendi*, and their young, always, *ratione impotentiœ*, seem not even exceptions to that general principle. Bracton, liv. 2, c. i.; Institutes, liv. iv. Tit. 9. Now, the usual title gained by possession is not defeasible by the mere loss of possession. Again, this ancient rule limiting the rights of ownership in animals *ferœ naturœ* seems inconsistent with the related law governing the responsibility of owners for injury done by such animals. Where a bear slipped his collar and in his escape to the woods injured a man, the court held the owner liable as a matter of course. *Vredenburg* v. *Behan*, 33 La. Ann. 627. The one limitation that has been suggested is that when the animal reaches its native place or an environment specially adapted to its existence, liability should cease. This points to a practical distinction between indigenous and imported animals — liability for the one may cease upon loss of possession, not for the other.

It would seem that the same law should govern the extent of the responsibility for animals *ferœ naturœ* and the rights of property in them; and it is to be regretted that an express dictum in the principal case insists upon the ancient rule. If in the principal case the interruption of the owner's possession had been momentary, it would be hard to hold that